HIGH COURT OF CHHATTISGARH: BILASPUR
S.B. HON'BLE SHRI VIJAY KUMAR SHRIVASTAVA, J
SECOND APPEAL NO. 163/2005

Appellant :
Defendant

Ravindra Singh,
aged about 49 years,
s/o. Shri Mohan Singh,
r/o. in front of Bharat
Mata School,
Tatibandh, Raipur (CG).

Vs.

Respondent
Plaintiff

Ishwar Dayal Agarwal,
aged about 57 years,
s/o. Shri Shekhar
Agarwal, r/o. in front of
Bharat Mata School,
Tatibandh, Raipur (CG).

PRESENT:

Mr. B.P. Sharma, Counsel for the appellant.
Mr. Rajeev Shrivastava, Counsel for the respondent.

J U D G M E N T

(Dated 7/10/2005)

Being aggrieved by the judgment and decree dated 02/02/2005 passed in First Appeal No.2-A/2004 between Ravindra Singh Vs. Ishwar Dayal Agarwal by the Court of the 13th Additional District Judge (Fast Track Court), Raipur, thereby confirming the judgment and decree dated 28/04/2004 passed in Civil Suit No.45-A/2002 by the court of the 5th Civil Judge, Class I, Raipur between Ishwar Dayal Agarwal Vs. Ravindra Singh, the appellant has preferred this second appeal under Section 100 of the Code of Civil Procedure.

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2) Heard learned counsel for the appellant on admission and both the parties on M.C.P.No. 883/2005 for vacating the ex parte stay order dated 08/04/2005.

3) Respondent/plaintiff stating himself the owner landlord of the suit accommodation and appellant his tenant filed a civil suit against the appellant for possession of the suit premises, arrears of rent and damages, claiming himself entitle for all these relieves under Section 12 (1) (A) (B) (C) (E)) & (O) of the M.P. Accommodation Control Act, 1961, averring that despite service of notice the arrears of rent have not been paid, that the suit accommodation is required bona fide for his and his family members residence and no other suitable accommodation is available to him in the city, that without his permission the suit accommodation has been sublet and the roof of the house has been illegally taken in possession by the appellant and that the appellant has created nuisance.

4) Appellant in his written statement admitted the fact that the plaintiff/respondent is owner and landlord of the suit accommodation. Appellant denied all the allegations leveled against him and pleaded that respondent does not require suit accommodation for his or his family members' residential purpose but only to increase the rent, has filed the instant suit for eviction. He further pleaded that during pendency of the suit other portions which were fallen vacant were let out to others; that itself destroys the foundation of bona fide requirement.

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5) Both the parties adduced their evidence in support of their case. Learned trial Court, after evaluating the evidence, held that the appellant did not pay the rent from October, 1997 onwards and a sum of Rs.6,750/- is lying as arrears. Learned trial Court further held that the suit accommodation is required bona fide by the respondent for his and his family members residential purpose and except the suit accommodation for their residential purposes, no other suitable residential accommodation is available in Raipur city, hence, decreed the suit for eviction and arrears of rent. Being aggrieved by the judgment and decree passed on 28/04/2004 in Civil Suit No.45-A/2002 by 5th Civil Judge, Class-I, Raipur, appellant/tenant filed an appeal bearing Civil Appeal No. 2A/2004. The appeal was heard by 13rd Additional District Judge, Raipur, who after evaluating the evidence, confirmed the findings of the trial Court and dismissed the appeal vide judgment and decree dated 02/02/2005. The tenant/appellant, being aggrieved by the impugned judgment and decree dated 02/02/2005 passed by the First Appellate Court, has filed this Second Appeal, under Section 100 of the Code of Civil Procedure, claiming that the appeal involves the following substantial questions of law.

> *"A. Whether in the present case the grant of decree on the ground of bona fide need for residential purposes is permissible when the plaintiff has failed to prove the fact of ownership of the suit accommodation more particularly in view of the fact that the plaintiff himself has come to the court during his examination about*

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partition of the suit house about the partition of the suit house amongst the members of the family?

B. *Whether the alleged partition of the suit house, as stated by the plaintiff during his examination is a real partition amongst the members of the family or a mere pretence of the plaintiff to avoid dismissal of the suit on the ground of fulfillment of his alleged bone fide need of the suit accommodation?*

C. *Whether the partition of suit house itself as claimed by the plaintiff between the members of the family and others of the different parts of the building is permissible in view of the inhibition contained under the C.G. Prakostha Swamitiv Adhiniyam, if no, Whether other parts of the building fell vacant during the pendency of the suit and prior to that can be said to extinguish the alleged bona fide need of the plaintiff?*

D. *Whether the courts below have committed a grave error of law and jurisdiction in not exercising the power under Section 145 of the Evidence Act and other related provisions of the Act compelling the plaintiff to answer the questions put forth from the side of the appellant herein, as the same are relevant for proper and fair disposal of the matter and Whether non-exercise of the said jurisdiction in light of Section 148 of the Evidence Act affects substantially*

sustainability of the judgment and decree of the Court below?

E. *Whether the finding of the courts below that the rent of the suit accommodation is Rs.1,350/- per month is sustainable on the basis of the evidence brought on record by the parties?*

F. *Whether the two Courts below have properly evaluated the evidence and documents brought on record by the parties to the suit in accordance with the settled principle of appreciation of evidence ?*

6) In plaint at para 2 respondent pleaded as below:

"2) *यह की वादी ईश्वर दयाल अग्रवाल भारत माता स्कूल के सामने टाटीबंध रायपुर, तहसील वो जिला रायपुर स्थित मकान के प्रथम मंजिल जिसमें तीन कमरा, रसोई तथा संडास शामील है, उसका स्वत्वाधिकारी, भवन स्वामी है। इस मकान का विवरण, वादपत्र के साथ संलग्न मानचित्र में लाल लकीर से रेखांकित कर दर्शाया गया है । वादपत्र के साथ संलग्न मानचित्र, वादपत्र का अंग है। वादी के स्वत्व का उक्त मकान इस वादपत्र में वादग्रस्त मकान के रुप में संबोधित किया गया है।* "

7) Appellant admits the pleading of respondent in plaint at para 2 which reads as "यह कि वादपत्र की कंडिका कमांक 1 और 2 स्वीकार है". Neither the appellant has challenged the title of respondent over the suit house in his written statement nor raised any objection regarding

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partition or law relating to C.G. Prakoshtha Swamitva Adhiniyam, 1976 (for short, "the Adhiniyam") that apart when respondent has admitted that appellant is owner landlord of the suit house the fact of partition or the law providing ownership of an individual apartment in a building are irrelevant. Here, it is also to be considered that the Adhiniyam does not extinguish the right of a owner.

8) In first appeal also the question of partition and applicability of C.G. Prakostha Swamitiv Adhiniyam have not been raised. The findings of lower court with regard to rent and bona fide need have been challenged in the first appeal and also it was raised that plaintiff was required to prove his ownership.

9) Both the Courts below, after evaluating the evidence on record, have given concurrent findings that the respondent requires suit accommodation for his residential purpose bona fide and no suitable accommodation of his own is available with the respondent at Raipur. After going through the record I do not find any perversity in evaluating the evidence.

10) It is settled law that parties are required to prove only whatever they have pleaded and accordingly both the Courts below on the settled principle of law delivered the judgment. The questions regarding family partition of properties and applicability of the Adhiniyam has been raised by the appellant are outside the pleading of both the parties that too for the first time in this second appeal and in my opinion these questions are not relevant in the suit for eviction which solely rest on the relation of landlord and tenant.

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11) I am of the opinion that in this second appeal no substantial question of law is involved, therefore, this appeal is liable to be dismissed and is accordingly dismissed. Consequently, M.C.P.No. 883/2005 stands disposed of.

Sd/-
V.K.Shrivastava
Judge

Raju